IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.452 of 2006

Date of Decision: 20.2.2007

Amrit Pal Singh .....Petitioner

Versus

The Hon'ble Punjab & Haryana High Court & others.....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.JS Maanipur, Advocate
for the petitioner.

Mr.BS Walia, Advocate for respondents 1 to 3.

Mr.Vipin Mahajan, Advocate for respondents 4 and 5.

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J.S.KHEHAR, J. (Oral)

Petitioner Amrit Pal Singh was inducted into the service of the Sessions Division, Gurdaspur as a Peon on 1.8.1994. Subsequently, he was transferred to the Sessions Division, Fatehgarh Sahib on 1.3.2001. While at Fatehgarh Sahib, the District Judge promoted the petitioner to the post of Clerk vide an order dated 8.8.2002.

The promotion of the petitioner to the post of Clerk from the post of Peon was assailed by respondents 4 and 5. It was the pointed contention of respondents 4 and 5, in their claim against the petitioner, that the promotion of the petitioner was beyond the purview of the Rules regulating the service. In this behalf, respondents 4 and 5 relied on Rule 7 of the Punjab Subordinate Courts Establishment (Recruitment and General

Conditions of Service) Rules, 1997 (hereinafter referred to as the "1997 Rules"). Rule 7 postulates that 90% of the posts of Clerks would be filled up by direct recruitment, whereas 10% of the aforesaid cadre would be filled up by promotion. Rule 7(vii) (c) of the 1997 Rules lays down the feeder cadres for promotion to the post of Clerks, as well as, the minimum eligibility conditions prescribed for such promotion. Rule 7(vii)(c) of the 1997 Rules is being extracted hereunder for facility of reference:

> "(c) 10% vacancies in the cadre of Clerks shall be filled up by promotion from amongst the Bailiffs, Process Servers, Daftri and Record Lifter possessing minimum Matric qualification or equivalent thereto having 5 years service as such subject to his qualifying the type test in English with a minimum speed of 30 W.P.M.

A perusal of the aforesaid Rule reveals that the following feeder cadres are eligible for promotion to the post of Clerk:

i) Bailiffs

ii) Process Servers

iii) Daftris and

iv) Record Lifters

Since the petitioner did not fall in any of the feeder categories, respondents 4 and 5 have assailed his promotion as being violative of Rule 7(vii)(c) of the 1997 Rules.

In order to controvert the claim raised by the respondents, the petitioner relied on Rule 18 of the 1997 Rules asserting that the mandate of 1997 Rules has been relaxed so as to include Peons and all other Class-IV employees in the zone of consideration for promotion to the post of Clerks. Rule 18 of the 1997 Rules, which was relied on by the petitioner, is being

extracted hereunder:

> "18. Power to relax:
>
> Where the District and Sessions Judge is satisfied that the operation of any rule causes undue hardship in any particular case, he may by order subject to the confirmation by the Chief Justice dispense with or relax the requirement of that rule to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner provided that the case is not dealt with in a manner less favourable to the officer or official concerned than in accordance with the rules."

The issue as to whether the petitioner was eligible for promotion for the post of Clerk, came to be adjudicated in an appeal filed at the hands of respondents 4 and 5 which was disposed of by this Court on the administrative side, by an order dated 3.1.2006. This Court, by its aforesaid order, set aside the order of promotion of the petitioner after recording a finding that the post of Peon was not one of the feeder posts earmarked for promotion to the cadre of Clerks under Rule 7(vii)(c) of the 1997 Rules.

Before this Court, in order to assail the appellate order dated 3.1.2006, learned counsel for the petitioner has vehemently contended, that the petitioner applied for appointment by way of direct recruitment to the post of Clerk, and in his aforesaid venture, that he did not make the grade, so as to fall within the number of posts advertised (to be filled up by direct recruitment). Hardship, according to the learned counsel for the petitioner, was suffered by the petitioner, in having failed to make the grade for appointment by way of direct recruitment, to the post of Clerk. Additionally, it is the contention of the learned counsel for the petitioner,

that none of those in the service of the Sessions Division holding any of the feeder cadre posts, fulfilled the eligibility conditions stipulated in Rule 7 (vii)(c) of the 1997 Rules, and as such, the Rule under reference was relaxed to consider the claim of the petitioner for promotion.

Rule 18 of the 1997 Rules has been extracted hereinabove. Its perusal reveals, that in a situation of hardship suffered by a member of the service, the District & Sessions Judge on being satisfied of the particular hardship, can relax any of the provisions of the rules, to eleviate the hardship suffered by the concerned employee(s). The factual position depicted hereinabove, in terms of the submissions advanced by the petitioner, in our view, do not disclose any hardship suffered by the petitioner. We are, therefore, of the view that the power of relaxation, could not have been exercised by the District Judge, to relax the mandate of Rule 7(vii)(c) of the 1997 Rules to make the petitioner eligible for promotion to the post of Clerk. The power exercised in the instant case cannot be termed as "relaxation" so as to make the rigour of the rule milder, but must be termed as "amendment" of the rules so as to add to the rule something which the rule framing authority by a conscious application of mind did not choose. It is apparent that the rule framing authority did not include the post of Peon, in the feeder cadre, for promotion to the post of Clerk; but the District Judge in the exercise of his authority enlargend the feeder cadre, by treating it as one of the feeder cadres for promotion. In our view, therefore, the District Judge committed two legal infirmities. Firstly, the rule of relaxation was applied in the absence of hardship. And secondly, the rule of relaxation was exercised beyond the permissible scope thereof.

It is, therefore, not possible for us to record a finding in favour

of the petitioner to the effect that Rule 18 of the 1997 Rules was rightfully relaxed in order to promote the petitioner from the post of Peon to the post of Clerk.

For the reasons recorded hereinabove, we find no infirmity in the appellate order dated 3.1.2006. Accordingly, the petition being devoid of merit, is hereby dismissed.

(J. S. KHEHAR)
JUDGE

(S. D. ANAND)
JUDGE

February 20, 2007
SRM